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12 United States Securities and Exchange Commission

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **WESTERN DIVISION**

16
17 SECURITIES AND EXCHANGE
18 COMMISSION,

19 Plaintiff,

20 vs.

21 JAMMIN' JAVA CORP., dba MARLEY
22 COFFEE, SHANE G. WHITTLE,
23 WAYNE S. P. WEAVER, MICHAEL K.
24 SUN, RENE BERLINGER, STEPHEN B.
25 WHEATLEY, KEVIN P. MILLER,
MOHAMMED A. AL-BARWANI,
ALEXANDER J. HUNTER, and
THOMAS E. HUNTER,

26 Defendants.
27
28

Case No. 2:15-CV-08921 SVW (MRWx)

**MOTION FOR ENTRY OF FINAL
JUDGMENT AGAINST
DEFENDANTS ALEXANDER J.
HUNTER (now known as JOHN
ALEXANDER) AND THOMAS E.
HUNTER**

1 Based on the Consent of Defendant Alexander J. Hunter, now known as John
2 Alexander (“A. Hunter”), attached as Exhibit 1, and the Consent of Defendant
3 Thomas E. Hunter (“T. Hunter”) (with A. Hunter, the “Hunters”), attached as Exhibit
4 2, and pursuant to Rule 58(d) of the Federal Rules of Civil Procedure, Plaintiff, the
5 U.S. Securities and Exchange Commission (“Commission”), respectfully requests
6 that this Court enter final judgment against A. Hunter in the form attached as Exhibit
7 3 and enter final judgment against T. Hunter in the form attached as Exhibit 4
8 (collectively, the “Proposed Judgments”).

9 1. On November 17, 2015, the Commission filed a complaint against, the
10 Hunters, Jammin’ Java Corp. (“Jammin’ Java”), and seven other individuals for
11 violations of the federal securities laws in connection with a \$78 million pump-and-
12 dump scheme.¹ (Dkt. No. 1).

13 2. On August 8, 2016, the Commission filed an Amended Complaint
14 against the same defendants. (Dkt. No. 121).

15 3. The Amended Complaint alleged that each of the Hunters violated
16 Section 17(b) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. § 77q(b), by
17 touting securities for compensation without adequately disclosing their compensation.
18 The Amended Complaint also alleged that each of the Hunters violated Section 10(b)
19 of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b), and
20 Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, by making false
21 statements and misleading omissions in connection with the purchase or sale of
22 securities.

23 4. As to each of the Hunters, the Amended Complaint seeks an order of
24 permanent injunction, disgorgement and prejudgment interest, civil monetary
25 penalties, and a penny stock bar.

26
27 ¹ On July 6, 2016, the Court entered final judgments as to Defendants Jammin’ Java
28 and Stephen B. Wheatley.

1 5. The Commission alleged that between November 2010 and May 2011,
2 the Hunters published emails, websites, advertisements and other materials promoting
3 the purchase of Jammin' Java stock.

4 6. The Commission alleged that the emails, websites, advertisements and
5 other materials contained statements that the Hunters knew were false and/or
6 misleading. The Commission alleged that the Hunters misrepresented their identities
7 and failed to disclose the compensation they received in connection with their
8 promotion of Jammin' Java stock. The Commission alleged that the promotion was
9 designed to, and did, inflate the price of Jammin' Java's stock.

10 7. The Commission alleged that the Hunters' statements were material.

11 8. The Commission alleged that the Hunters used interstate facilities or the
12 mails to distribute the emails, websites, advertisements and other materials promoting
13 Jammin' Java stock.

14 9. Each of the Hunters has agreed to resolve this matter with the
15 Commission by consenting to the relief requested in the Proposed Judgments without
16 admitting or denying the allegations in the Amended Complaint.

17 10. In Paragraph 1 of each of the Consents, the Hunters acknowledge having
18 been served with the complaint in this action² and admit the Court's jurisdiction over
19 them and over the subject matter of this action.

20 11. The Proposed Judgments (i) permanently enjoin the Hunters from
21 violating Sections 17(b) of the Securities Act, and Section 10(b) of the Exchange Act
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23 ² The Consents were drafted and submitted to the Hunters before the Amended
24 Complaint was filed and do not reflect the Hunters' receipt of service of the Amended
25 Complaint. The Hunters, through counsel, were served with copies of the Amended
26 Complaint on August 8, 2016 in accordance with Rule 5(b)(3) of the Federal Rules of
27 Civil Procedure and Local Rule 5-3.2.1. (*See* Dkt. No. 121). The Hunters
28 acknowledged receiving service when their counsel filed a request to extend the time
to respond to the Amended Complaint. (*See* Dkt. No. 130).

1 and Rule 10b-5 thereunder; (ii) order each of the Hunters to pay a civil penalty of
2 \$300,000; and (iii) prohibit each of the Hunters from participating in an offering of
3 penny stock under Section 20(g) of the Securities Act, 15 U.S.C. § 77t, and Section
4 21(d)(6) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u.

5 12. As reflected in each of the Consents, the Proposed Judgments have been
6 reviewed by each of the Hunters and their counsel.

7 13. On May 23, 2016, each of the Hunters filed an answer and affirmative
8 defenses to the complaint. (Dkt. Nos. 82–83). Pursuant to Paragraph 11 of the
9 Consents, each of the Hunters withdraws his answer and affirmative defenses to the
10 complaint.

11 14. The Commission’s case against the remaining Defendants will continue.

12 15. Under Rule 54(b) of the Federal Rules of Civil Procedure, there is no
13 just reason to delay entry of final judgment as to the Hunters. Entry of the Proposed
14 Judgments will resolve all claims against the Hunters in this action. There is little risk
15 of piecemeal appeals as each of the Hunters has waived his right to appeal from this
16 final judgment, as reflected in Exhibit 1 and Exhibit 2.

17 16. In addition, entry of the Proposed Judgments will narrow the issues to be
18 resolved at trial, conserving judicial resources and saving the Commission and the
19 Hunters the time and expense of continued discovery and litigation.

20 WHEREFORE, because the Proposed Judgment will resolve the claims against
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1 Hunters and conserve judicial resources, the Commission respectfully requests that
2 the Court find that there is no just reason to delay entry of final judgment and enter
3 the Proposed Judgments as to Alexander J. Hunter and Thomas E. Hunter.

4
5 Dated: October 28, 2016

Respectfully submitted,

6 /s/ **Peter Senechalle**

Peter Senechalle

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CERTIFICATE OF SERVICE

Peter Senechalle hereby certifies that he caused the foregoing document to be electronically filed through the Court's CM/ECF system on October 28, 2016, which automatically sends an electronic copy of the document to all counsel of record.

s/Peter Senechalle